

1 remember.

2 Q I'm having --

3 A I don't remember for sure if I did or not.

4 Q Did you -- I think during your deposition a month or
5 so ago you testified generally that your, your responsibility
6 -- or you felt it was your responsibility to the Linders to
7 call to their attention allocation matters potentially their
8 interests.

9 A Correct.

10 Q Correct?

11 A Um-hum.

12 Q And did you do that in a formal way or with a phone
13 call or what was your, what was your practice?

14 A Telephone call.

15 Q To who?

16 A Bruce Linder.

17 Q How often do you speak with Donald Linder, how
18 frequently?

19 A Not very often, probably five times a year.

20 Q And with Bruce how often?

21 A It varies from once to five times a week.

22 Q From once to five times a week?

23 A Correct.

24 Q Now, in the, in the spring of 1991 Bruce Linder was,
25 was not yet a stockholder of Olde Towne? Is that not correct?

1 A I don't recall the exact date that that changed.

2 Q Well, maybe we can be helpful here. I'm going to
3 show you two, two Ownership Reports. The first one is March
4 8, 1991 signed by Donald Linder. This is reporting pursuant
5 to the transfer of control you and I discussed 20 minutes or
6 so ago, reporting that Donald Linder owns 75 shares, John
7 Linder owns 5 shares and that you own 20 shares. Okay?

8 A Um-hum.

9 Q Now I'm showing you an October 24, 1991 Ownership
10 Report signed by -- signed by whom?

11 A Right here?

12 Q Yes.

13 A Myself.

14 Q Yourself? Yeah, you did sign. Reporting that as of
15 September 1, 1991 the stock was now owned 55 shares, 55
16 percent, by Donald Linder, 25 shares, 25 percent by Bruce
17 Linder and still 20 percent, 20 shares, by you. Is that
18 correct?

19 A Um-hum.

20 Q So apparently sometime shortly before September 30
21 of 1991 Bruce Linder acquired 5 shares from John and 20 shares
22 from Don Linder.

23 MR. MILLER: Objection, Your Honor. That Ownership
24 Report doesn't indicate anything of the sort. The Commission
25 does not require updates on Ownership Reports. The Commission

1 requires annual Ownership Reports. All that shows is sometime
2 between the filing of the earlier report and September 30th
3 this stock was acquired. It has nothing to do with whether it
4 was shortly before September 30th or immediately thereafter,
5 after the first report.

6 MR. WARD: Mr. Miller is absolutely correct. I note

1 A They asked me if it was a fine thing to do. They
2 didn't just do it.

3 Q I'm sorry?

4 A They talked to me about it prior to doing it.

5 Q They wanted to get your, your approval or at least
6 an indication of potential problems with Bruce if you had any,
7 right?

8 A Correct.

9 Q You already knew Bruce?

10 A Yes, I did.

11 Q How long had you known him?

12 A Seven years approximately.

13 Q And that phone call occurred sometime -- obviously
14 sometime between March 8 of '91 and September 30 of '91?

15 A I think so.

16 Q Which, coincidentally, is about the same time we're
17 talking about here on the Eldon allocation and when it is you
18 might have imparted to, to Bruce information concerning that?

19 A Correct.

20 Q And you're still, you're still unclear as to when,
21 when you first mentioned the Eldon offer -- the Eldon
22 possibility to him?

23 A Yes. I don't remember the date.

24 Q Well, leaving aside when it was, what -- were you
25 -- was it your sense that the Eldon allocation or the

1 potential Eldon allocation represented an opportunity or that
2 it represented a source of new competition?

3 A I considered it an opportunity.

4 Q An opportunity for whom?

5 A Olde Towne Communications.

6 Q Even though you knew that Dave Brown was the
7 proponent of it?

8 A Correct.

9 Q And you knew that David Brown was -- certainly
10 intended to file an application for it?

11 A Correct.

12 Q So if it were an -- if it were to be an opportunity
13 for Olde Towne Communications, that opportunity would have --
14 that -- such an application would -- could not be made in the
15 name of Olde Towne Communications, could it, in order to be
16 successful?

17 A I'm not certain that it could or not.

18 Q Well, Olde Towne Communications has -- obviously has
19 a station already and its principles have a number of other
20 stations.

21 JUDGE FRYSIK: Well, ask him whether he's familiar
22 with the rules.

23 BY MR. WARD:

24 Q Are you familiar with the Commission's rules on --
25 well, there's not -- we're not really talking about a rule

1 here. We're talking about a policy under which the Commission
2 prefers applicants who have no other media interest. You're
3 familiar with that, are you not?

4 A Yes, I am.

5 Q Yes. So such an application would have to -- if it
6 were to be successful against Dave Brown, it would have to, it
7 would have to be fashioned in such a way that the media
8 interest of the principles of Olde Towne were not attributed
9 to the new applicant? Correct?

10 A That's a possibility.

11 Q Let me ask you this. Do you, do you have occasion
12 to discuss Olde Towne regulatory matters with, with Mr. Neely
13 or Mr. Miller?

14 A Yes, I do.

15 Q They have represented the station from the outset?
16 They represented you when you first applied for Eddyville, did
17 they not?

18 A Mr. Miller and I believe his father.

19 Q And so you have -- how frequently -- just as a
20 general rule, how frequently do you call them or do they call
21 you on, on matters affecting KKSI?

22 A Twice a year, something like that.

23 Q Do, do they as a matter of course keep you apprised
24 or send out memoranda to, to their clients such as, such as
25 you concerning proposed FM allocations within your general

1 area of interest, geographical area of interest?

2 A I've never seen any.

3 Q Never seen any? Do they did either of these

1 Q Several weeks of the time you learned about the
2 proposed allotment?

3 A Correct.

4 Q Which, again, was in the spring, April, May? When
5 was Ben Evans down there -- you said Ben Evans -- you learned
6 about it from Ben Evans and he was there -- he was in the area
7 --

8 MR. NEELY: Objection. The witness never testified
9 that Ben Evans was in the area.

10 MR. WARD: No -- please.

11 BY MR. WARD:

12 Q Was not Ben Evans in the area at the time?

13 A No, he was not.

14 Q I'm sorry.

15 MR. WARD: Good point.

16 BY MR. WARD:

17 Q You were -- when you were -- the context of your
18 discussion with Ben Evans was that you wanted him to check out
19 some potential translator channels for, for KCSI? Correct?

20 A That is correct.

21 Q In the area of Eddyville? But you can't recall the
22 month, whether it was March, April, May? It was just sometime
23 in the spring?

24 A I can't even recall the date I talked with him.

25 Q In any event, you discussed with, you discussed

1 with, with Bruce the proposal for an allotment sometime, maybe
2 several months before the offer was actually made? Correct?

3 A Correct.

4 Q And what was his reaction when you informed him of
5 it?

6 A He did not act interested.

7 Q I'm sorry?

8 A He did not act interested in it.

9 Q Okay. Did he ask you to keep him apprised of
10 further developments or --

11 A He didn't really say anything.

12 Q Did you, did you and he have any further discussions
13 about it up until the time that the Commission actually made
14 the allotment?

15 A I don't remember any further discussions.

16 Q After the Commission made the allotment, did you
17 have any discussions with him?

18 A I don't recall any further discussions.

19 Q You don't recall any discussions with him about
20 whether, whether it would be possible for, for the Eldon
21 channel to be engineered in such a fashion that 70 dBu overlap
22 would be avoided with, with the Eddyville station?

23 A I don't recall.

24 Q Do you ever recall them advising you whether -- on
25 that subject, that it could be engineered in such a fashion?

1 A I don't recall talking to them about it.

2 Q You don't recall telling them that?

3 A Uh-uh.

4 Q Okay. I'd like to refer you to Rivertown Exhibit 6,
5 the letter from Mr. Lysiak to, to you dated July 30, 1991. Do
6 you recall receiving that letter?

7 A Yes, I do.

8 Q Did Lysiak send it to you spontaneously or, or had
9 you requested that he --

10 A I requested it.

11 Q When did you make that request?

12 A I don't recall the exact date.

13 Q Why did you make that request?

14 A I wanted to determine whether the two stations could

1 Q And his letter of August 8th with it's more limited
2 79 dBu contour overlap limited area to located map was the
3 result of that, right?

4 A That is correct.

5 Q Now, after you received that, did you, did you
6 inform -- well, did you inform Mr., Mr. Bruce Linder that,
7 that wasn't any possibility of locating this Eldon transmitter
8 in such a fashion that overlap would be permitted -- or that
9 overlap would not occur and there'd be no problem with --

10 A I did telephone him.

11 Q Shortly after receiving this?

12 A Correct.

13 Q And I guess that would have really been the first
14 time you talked to him about this subject since the spring
15 when you mentioned the allotment was being proposed?

16 A Yes, that I can remember.

17 Q That you can remember? During this period he was in
18 Eddyville or in Oskaloosa or where your studios were at that
19 time, he was there fairly often, was he not?

20 A Twice a month or something like that.

21 Q But it's possible that the subject of Eldon came up
22 during discussions you might have had with him during those
23 visits, but you don't recall?

24 A I don't recall it --

1 Your Honor, and didn't get objected to.

2 MR. MILLER: I thought it was a standing objection.

3 JUDGE FRYSIK: Say, anything is possible.

4 MR. WARD: Yes. I'm made a lot of objections
5 phrased exactly that way. The questions still get asked,
6 though.

7 BY MR. WARD:

8 Q Well, when you, when you advised him of the --
9 shortly after receiving this August 8, '91 letter and area to
10 locate map, when you advised Bruce Lender of the potential,
11 did his level of interest seem greater or less than, than
12 previously?

13 A He didn't act any more or less interested.

14 Q Did he ask you to do anything more on the subject?

15 A Not that I recall, no.

16 Q Did he indicate that he had discussed the matter
17 with his father?

18 A No, he did not.

19 Q You never discussed the matter with his father?

20 A No, I did not.

21 Q Did you ever consider that, that this might be an
22 application opportunity for yourself personally?

23 A No, I did not.

24 Q Or yourself in combination with other people?

25 A The possibility that I --

1 Q For example, did you give consideration to, to
2 joining Carmella Sample with an application for Eldon?

3 A I did not consider that.

4 Q I'm sorry?

5 A I did not consider that.

6 Q But you might have considered other people?

7 A Yes.

8 Q Did you ever discuss with other people the
9 possibility of putting together an application for Eldon?

10 A I think I may -- might have.

11 Q You think you might have?

12 A Um-hum.

13 Q When did Carmella Sample first discuss her interest
14 in the Eldon allocation with you?

15 A I can't recall the exact -- she had been discussing
16 her interest in radio stations in the past. I don't recall
17 the exact date that the Eldon --

18 Q Well, was it before or after the allocation had been
19 made?

20 A Before.

21 Q Before the allocation was made? So she was aware
22 that the allocation had been proposed. Do you recall whether
23 it was -- was she in the -- back in the spring when you made
24 that little public statement about the, the -- of the Eldon
25 proposal to your -- in the KKSI studios in -- do you recall if

1 she was present at that time?

2 A I think she was.

3 Q You think she was? In fact, that might have been
4 why you might have just sort of -- said we ought to get
5 Carmella here to file for it, right?

6 A That's correct.

7 Q And she was --

8 MR. NEELY: The witness testified earlier that he
9 did not making any such statement.

10 MR. WARD: Fine, but he just, he just now testified
11 he may have -- might very well have and it was her presence
12 which might have stimulated it. There's nothing objectionable
13 to that question, Your Honor. That's --

14 JUDGE FRYSIK: No, it isn't.

15 MR. WARD: That's cross examination. Objection's
16 overruled, all right?

17 BY MR. WARD:

1 BY MR. WARD:

2 Q Well, that's true, but is that the point? Was it
3 after that that she first started talking to you about her
4 interest, possible interest, in broadcast ownership?

5 A She actually talked about that prior to the Eldon
6 when she was first hired at the radio station.

7 Q When she was first hired which was in the fall of
8 1990 --

9 A Correct.

10 Q -- she was talking to you about, about how to get
11 into ownership?

12 A She had known that I had it and she was interested
13 in how it was done.

14 Q And you, you wanted to be helpful?

15 A Yes.

16 JUDGE FRYSIK: Did you say yes?

17 WITNESS: Yes, I did.

18 BY MR. WARD:

19 Q All right. Now, at some point she came to you and
20 asked you to, to -- well, she told you that she was actually
21 going to proceed in some fashion to apply for Eldon? Correct?

22 A I don't recall her saying that. I don't recall it.

23 ~~I just don't remember when she~~

1 for a transmitter site, hum?

2 A I think the time was when -- the time that I -- the
3 most earliest time I could remember was when we were actually
4 looking at the maps.

5 Q When we were what?

6 A Looking at the maps.

7 Q You mean the first you knew that she was interested
8 in applying for Eldon was when you -- when she came to you
9 with maps?

10 A That's what I remember.

11 Q What maps are we talking about?

12 A She came to me with an area to locate map.

13 Q With an area to locate map?

14 A Right.

15 Q Would that be this, this map here? I'm showing you
16 a map that was handed to me this morning by your counsel.

17 JUDGE FRYSIK: You're nodding you head. Does that
18 mean yes?

19 WITNESS: I think it is, yes.

20 BY MR. WARD:

21 Q Well, at that -- was this -- at this point had you
22 received the August 8th map, the more restricted 70 dBu
23 limited area to locate map?

24 A I think I had. Can I --

25 Q You think you had? Well, were you surprised when

1 she showed you a map that was similar to the first map which
2 you had received, that map that didn't contain the 70 dBu
3 limitation? Did that surprise you?

4 A Yes, it did.

5 Q Did you express some surprise to her about that?

6 A I don't remember if I talked to her about it or not.

7 Q Did you, did you ask her how she came to receive
8 that from Mr. Lysiak?

9 A I don't remember.

10 Q Had you referred her to Mr. Lysiak?

11 A I think I had.

12 Q You think you had referred her to Mr. Lysiak? At
13 the same time that you had written Mr. Lysiak or called Mr.
14 Lysiak asking for the first map or, or sometime earlier or
15 later or what -- when?

16 A Well, I remember telling her places that she should
17 look into for engineering and attorneys. It must have been
18 sometime before that. I don't remember exactly.

19 Q Well -- okay. If you were telling her -- you were
20 counseling her on where to get the attorneys and engineers,
21 she must, she must have come at you with information that she
22 was interested in applying. So the first time you were told
23 she was interested in applying was not when she came at you
24 with a map? Otherwise, we got a -- we've gone full circle
25 here.

1 MR. MILLER: Your Honor, I think that there's a --
2 the witness had previously testified that Ms. Sample first
3 approached him soon after she started working at KKSI with an
4 interest in getting into ownership.

5 MR. WARD: We're talking about Eldon -- we're
6 talking about the Eldon application.

7 MR. MILLER: Yeah, but no. She expressed a general
8 interest early on.

9 MR. WARD: Well, I'm sorry. I don't -- that's a
10 valid point.

11 BY MR. WARD:

12 Q Had you -- when she expressed that early interest,
13 had you given her the names of engineers and lawyers who might
14 be helpful?

15 A No.

16 Q No?

17 A Not that I remember.

18 Q You never did so until she told her she was
19 interested in Eldon?

20 A Correct.

1 A Yes.

2 Q Break the circle for me.

3 A It's hard for me to remember the exact date.

4 Q Okay.

5 A It was about the time when she had asked me how to
6 proceed.

7 Q Whenever it was, leaving aside the question of when
8 it was when she first told you of her interest did she also

1 Q After she told you that she and Bruce Linder were
2 going to be involved in, in putting together some kind of an
3 application, did you have occasion to discuss that subject
4 with Bruce Linder?

5 A I think I asked him about it.

6 Q And what did he tell you?

7 A He wouldn't give me any information about it.

8 Q Would you characterize him as being secretive?

9 A He just didn't have anything to say about it.

10 Q In your, in your testimony you say you -- in your
11 written testimony you say you made some assumptions about the
12 nature of the organization that Ms. Sample and Mr. Linder --

13 A Yes, I did.

14 Q You assumed that he was going to be a voting
15 participant?

16 MR. NEELY: What page is that on, Don? You're
17 referring to his testimony.

18 MR. WARD: Well, it's on page 4. In fact, it's
19 still underlined. The -- do you have page 4?

20 MR. NEELY: I do.

21 MR. WARD: And see the underlined part there?

22 MR. NEELY: I see that. He's -- paragraph now.

23 MR. WARD: Do you know why that's underlined?

24 MR. NEELY: Yes. I'll state for the record that at
25 the time of Mr. McVey's deposition we provided to you an

1 amended copy of some deposition -- written direct case
2 testimony and when we returned to the office that afternoon
3 and Mr. McVey signed his statement and it was prepared for
4 filing with the Commission, apparently this language was, was
5 not underlined. The revised language that we had provided to
6 you earlier in the day was red line underlined to emphasize
7 what had been changed, and from inadvertent collating or
8 processing problem this testimony remained underlined.

9 MR. WARD: That's -- that -- you're not trying to
10 emphasize anything in particular here?

11 MR. NEELY: That's not the intent.

12 MR. WARD: Yeah.

13 BY MR. WARD:

14 Q Now, you -- but that, that is your, that is your
15 testimony? That's -- you did -- that's strictly -- that was
16 strictly an assumption on your part at that time?

17 A Yes, it was.

18 Q And you've never tested that assumption by asking
19 Carmella Sample or Bruce Linder?

20 A I don't remember.

21 Q And you don't remember --

22 A I don't remember ever asking.

23 Q And neither one of them volunteered to you what,
24 what the nature of the entity was going to be?

25 A No, they did not.

1 Q And did you ever -- she did come at you, you said,
2 with a map, with an area to locate map, right?

3 JUDGE FRYSIK: You've got to speak your answer.

4 WITNESS: Yes, she did.

5 MR. WARD: Now, I'm a little confused, Mr. McVey. I
6 want to ask him about this.

7 MR. NEELY: That's not his testimony.

8 BY MR. WARD:

9 Q In your -- Mr. McVey, the first statement that you
10 -- that was submitted by Sample on your behalf, their first
11 version of Exhibit 5, contained language, "She came to me with
12 an area to locate map and a 7.5 -- and 7.5 minute maps." I'm
13 showing you the, the red lined version of the changes that
14 were made, that your counsel just described a couple minutes
15 ago, which show that that language was deleted from your
16 statement and does not now appear in your current statement,
17 and yet you just testified to me orally that she did, in fact,
18 come to you with a map.

19 A She came --

20 MR. NEELY: Objection.

21 WITNESS: -- with an area to locate map, not a 7.5.
22 That's where I was confused.

23 BY MR. WARD:

24 Q I see. Then she did come at you with a, with a area
25 to locate map?

1 A Yes, she did.

2 Q Okay. And that was -- that map said nothing about
3 any 70 dBu overlap?

4 A No, it did not.

5 Q And you, and you never mentioned to her that you had
6 yourself received two maps from, from Lysiak, one of which
7 depicted a more restricted area to locate?

8 A I don't remember whether I did or not.

9 Q Well, that's kind of -- that's -- but your testimony
10 as I understand it is that you -- it was -- you were guided in

11 looking to help her find -- the truth -- the man mentioned

1 A Did she, did she manifest any understanding as to
2 the power and height standards of -- allowed for this station
3 or did you explain those to her?

4 A No, she didn't. She did not understand any of that.

5 Q She didn't understand any of that? Did you explain,
6 explain to her the power that the station could operate at?

7 A I tried to explain it to her, yes.

8 Q You tried to explain it to her? Was that difficult?

9 A Somewhat.

10 Q She's not, not technically oriented?

11 A No.

12 Q But -- and you -- but you, you explained to her
13 power and height considerations and what they would permit in
14 the way of, of coverage, what the listenable signal might --
15 what its contour might look like?

16 A That's correct.

17 Q Did you discuss city grade contour at all?

18 A Yes, I did.

19 Q That's a 70 dBu contour, isn't it?

20 JUDGE FRYSIK: Will the witness please answer with
21 audible words, full sentences?

22 BY MR. WARD:

23 Q And you discussed that in the context of what, what
24 the Eldon city grade contour might cover, but you never
25 mentioned to her that your concept of that coverage contour --

1 that coverage of the Eldon city grade would be so designed to
2 avoid overlap with the Eddyville city grade?

3 A No, I don't recall mentioning that to her.

4 Q But you do recall telling her about the coverage,
5 the city grade coverage, she might expect from the Eldon
6 station?

7 A The city grade and the -- service.

8 Q But those are not the same?

9 A No, they're not.

10 Q No. And you, you never showed her your restricted
11 area to locate map?

12 A I don't remember showing it.

13 Q Did you ever, did you ever discuss with her the
14 possibility of -- that the Eldon station might cause
15 interference to the Eddyville station or vice versa?

16 A No.

17 Q Is there any potential for that to your --
18 knowledge?

19 A I don't believe so.

20 Q At the -- let me back up. Are you familiar with an
21 allocation that the Commission was considering during 1991 to
22 Albia?

23 A Yes, I am.

24 Q And another one to, to New Sharon?

25 A Yes, I am.